

EXHIBIT E

AO 88B (Rev. 12/13) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action

UNITED STATES DISTRICT COURT

for the

Southern District of New York

Securities & Exchange Commission

Plaintiff

v.

Lawrence E. Penn, III, et al.

Defendant

Civil Action No. 14 Civ. 581 (VEC)

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To:

Paul D. Engel, CPA, ASA, CFA, Appraisal Economics Inc.
140 East Ridgewood Ave, Ste 380N, Paramus, NJ 07652

(Name of person to whom this subpoena is directed)

☒ **Production:** **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: See Attachment A hereto.

Place: Securities & Exchange Commission, Brookfield Place,
200 Vesey Street, NYC NY, 10281

Date and Time:

November 30, 2017 9:00 am

☐ **Inspection of Premises:** **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:**Date and Time:**

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: November 20, 201

CLERK OF COURT

OR

Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party)

Securities & Exchange Commission, who issues or requests this subpoena, are:

Howard Fischer/Katherine Bromberg, SEC, Brookfield Place, 200 Vesey Street, NYC NY, 10281

Notice to the person who issues or requests this subpoena

A notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 14 Civ. 581 (VEC)

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for (name of individual and title, if any) _____
on (date) _____.

☐ I served the subpoena by delivering a copy to the named person as follows: _____

_____ on (date) _____; or

☐ I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)**(c) Place of Compliance.**

(1) *For a Trial, Hearing, or Deposition.* A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) *For Other Discovery.* A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) *Avoiding Undue Burden or Expense; Sanctions.* A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) *Command to Produce Materials or Permit Inspection.*

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) *Quashing or Modifying a Subpoena.*

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) *Producing Documents or Electronically Stored Information.* These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) *Claiming Privilege or Protection.*

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) *Contempt.*

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

ATTACHMENT A

DEFINITIONS

1. The definitions and rules of construction set forth in Rules 26, 34, and 45 of the Federal Rules of Civil Procedure (“Federal Rules”) and Rule 26.3 of the Local Rules of the United States District Courts for the Southern and Eastern Districts of New York (“Local Rules”) are fully incorporated by reference herein.
2. “You” or “Your” means Paul Engel, any of your subsidiaries, affiliates, predecessors, successors, officers, directors, employees, agents, general partners, limited partners, partnerships and aliases, code names, or trade or business names used by any of the foregoing, including but not limited to Appraisal Economics Inc.
3. “Penn” means Lawrence E. Penn any of his subsidiaries, affiliates, predecessors, successors, officers, directors, employees, agents, general partners, limited partners, partnerships and aliases, code names, or trade or business names used by any of the foregoing.
4. “Your Response” means the response of Paul Engel and or Appraisal Economics Inc.

INSTRUCTIONS

1. The instructions set forth in Federal Rule 45(e) and Local Rule 26.2, including for asserting any privilege claim, are fully incorporated by reference herein.
2. You must produce all documents described below in the section entitled “Documents To Be Produced,” insofar as they are in your possession, custody, or control.
3. “Relevant Time Period” means **January 1, 2012** through the date of your complete response to this subpoena.

DOCUMENTS TO BE PRODUCED

Produce the following documents, records and information in Your possession or custody, or subject to Your control, for the Relevant Time Period:

1. All materials in Your file related to the litigation titled *SEC v. Penn, et al.*, No. Civ. 14-0581 being litigated in the District Court of the Southern District of New York in front of Judge Caproni.
2. All materials related to Your retention as an expert by Penn, including, but not limited to:
 - a. Those materials received in connection with the matter or retention from Penn.
 - b. Those materials received in connection with the matter or retention from any other defendant or party to this action, or from anyone else.
 - c. Any materials reviewed, received, relied on or considered in connection with drafting the report and Your retention.

UPS CampusShip: View/Print Label

1. **Ensure there are no other shipping or tracking labels attached to your package.** Select the Print button on the print dialog box that appears. Note: If your browser does not support this function select Print from the File menu to print the label.
2. **Fold the printed label at the solid line below.** Place the label in a UPS Shipping Pouch. If you do not have a pouch, affix the folded label using clear plastic shipping tape over the entire label.
3. **GETTING YOUR SHIPMENT TO UPS**
Customers with a Daily Pickup
 Your driver will pickup your shipment(s) as usual.

Customers without a Daily Pickup

Take your package to any location of The UPS Store®, UPS Access Point(TM) location, UPS Drop Box, UPS Customer Center, Staples® or Authorized Shipping Outlet near you. Items sent via UPS Return Services(SM) (including via Ground) are also accepted at Drop Boxes. To find the location nearest you, please visit the Resources area of CampusShip and select UPS Locations.

Schedule a same day or future day Pickup to have a UPS driver pickup all your CampusShip packages.


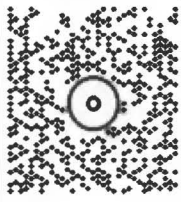


Hand the package to any UPS driver in your area.

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 NAMIRA INC
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 NEW YORK ,NY 10007

UPS Access Point™
 THE UPS STORE
 14 MURRAY ST
 NEW YORK ,NY 10007

UPS Access Point™
 TRIBECA CLEANERS
 95 READE ST
 NEW YORK ,NY 10013

FOLD HERE

MICHAEL VITALE 2123369120 SEC HY REGIONAL 200 VESEY STREET NEW YORK NY 102811022 SHIP TO: PAUL D. ENGEL, CPA, ASA, CFA APPRAISAL ECONOMICS INC. STE 380N 140 EAST RIDGEWOOD AVE PARAMUS NJ 07652-3915	0.0 LBS LTR 1 OF 1	NJ 075 9-02  	UPS NEXT DAY AIR 1 TRACKING #: 1Z 88R 5V4 24 9007 0843 	BILLING: P/P SIGNATURE REQUIRED 
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CS 19.5 48L WNTNVS0 93.0A 10/2017

AO 88B (Rev. 12/13) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action

UNITED STATES DISTRICT COURT

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Southern District of New York

Securities & Exchange Commission

Plaintiff

v.

Lawrence E. Penn, III, et al.

Defendant

Civil Action No. 14 Civ. 581 (VEC)

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To:

T. Scott Vandervliet, ASA, Appraisal Economics Inc.
140 East Ridgewood Ave, Ste 380N, Paramus, NJ 07652

(Name of person to whom this subpoena is directed)

☒ **Production:** **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material: See Attachment A hereto.

Place: Securities & Exchange Commission, Brookfield Place,
200 Vesey Street, NYC NY, 10281

Date and Time:

November 30, 2017 9:00 am

☐ **Inspection of Premises:** **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:

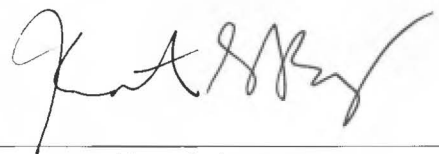
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Date: November 20, 201

CLERK OF COURT

OR



Signature of Clerk or Deputy Clerk

Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party)

Securities & Exchange Commission, who issues or requests this subpoena, are:

Howard Fischer/Katherine Bromberg, SEC, Brookfield Place, 200 Vesey Street, NYC NY, 10281

Notice to the person who issues or requests this subpoena

A notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Civil Action No. 14 Civ. 581 (VEC)

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(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____

on *(date)* _____

☐ I served the subpoena by delivering a copy to the named person as follows: _____

_____ on *(date)* _____ ; or

☐ I returned the subpoena unexecuted because: _____

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of \$ _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

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(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

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3. “Penn” means Lawrence E. Penn any of his subsidiaries, affiliates, predecessors, successors, officers, directors, employees, agents, general partners, limited partners, partnerships and aliases, code names, or trade or business names used by any of the foregoing.

4. “Your Response” means the response of T. Scott Vandervliet and or Appraisal Economics Inc.

INSTRUCTIONS

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2. You must produce all documents described below in the section entitled “Documents To Be Produced,” insofar as they are in your possession, custody, or control.

3. “Relevant Time Period” means **January 1, 2012** through the date of your complete response to this subpoena.

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1. All materials in Your file related to the litigation titled *SEC v. Penn, et al.*, No. Civ. 14-0581 being litigated in the District Court of the Southern District of New York in front of Judge Caproni.

2. All materials related to Your retention as an expert by Penn, including, but not limited to:

- a. Those materials received in connection with the matter or retention from Penn.
- b. Those materials received in connection with the matter or retention from any other defendant or party to this action, or from anyone else.
- c. Any materials reviewed, received, relied on or considered in connection with drafting the report and Your retention.

UPS CampusShip: View/Print Label

1. **Ensure there are no other shipping or tracking labels attached to your package.** Select the Print button on the print dialog box that appears. Note: If your browser does not support this function select Print from the File menu to print the label.
2. **Fold the printed label at the solid line below.** Place the label in a UPS Shipping Pouch. If you do not have a pouch, affix the folded label using clear plastic shipping tape over the entire label.
3. **GETTING YOUR SHIPMENT TO UPS**
Customers with a Daily Pickup
 Your driver will pickup your shipment(s) as usual.

Customers without a Daily Pickup

Take your package to any location of The UPS Store®, UPS Access Point(TM) location, UPS Drop Box, UPS Customer Center, Staples® or Authorized Shipping Outlet near you. Items sent via UPS Return Services(SM) (including via Ground) are also accepted at Drop Boxes. To find the location nearest you, please visit the Resources area of CampusShip and select UPS Locations.

Schedule a same day or future day Pickup to have a UPS driver pickup all your CampusShip packages.

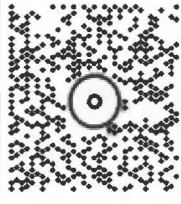

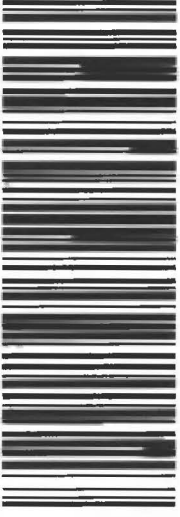

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UPS Access Point™
 THE UPS STORE
 14 MURRAY ST
 NEW YORK, NY 10007

UPS Access Point™
 TRIBECA CLEANERS
 95 READE ST
 NEW YORK, NY 10013

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MICHAEL VITALE 212-336-9120 SEC-NY REGIONAL 200 VESBY STREET NEW YORK, NY 102811022 SHIP TO: T. SCOTT VANDERVIJLT, ASA APPRAISAL ECONOMICS INC. STE 380N 140 EAST RIDGEWOOD AVE PARAMUS NJ 07652-3915	0.0 LBS LTR	1 OF 1
		
NJ 075 9-02 		
UPS NEXT DAY AIR TRACKING #: 1Z 88R 5V4 24 9215 9432		
		
BILLING: P/P SIGNATURE REQUIRED		
Reference # 1: 8989		
		



Lawrence Penn <lpenn3@gmail.com>

SEC v. Penn, et al., No. Civ. 14-0581 (VEC)

Bromberg, Katherine <BrombergK@sec.gov>

Mon, Nov 20, 2017 at 2:52 PM

To: "Lawrence Penn (lpenn3@gmail.com)" <lpenn3@gmail.com>, "Ian Orr (iorr@orrbrownlaw.com) (iorr@orrbrownlaw.com)" <iorr@orrbrownlaw.com>

Cc: "Fischer, Howard" <FischerH@sec.gov>

Mr. Penn and Mr. Orr:

Attached please find notice of subpoenas issued in the above-referenced action.

Best,

Kate

Katherine Bromberg

Senior Counsel

U.S. Securities and Exchange Commission

Division of Enforcement

New York Regional Office

200 Vesey Street, Suite 400

New York, NY 10281-1022

(212) 336-0170

brombergk@sec.gov

PRIVILEGED & CONFIDENTIAL: This email message (including any attachments) from the United States Securities and Exchange Commission is for the exclusive use of the intended recipient(s) and may contain confidential, non-public, and privileged information. If you are not the intended recipient, please do not read, distribute, or take action in reliance upon this message. If you have received this email in error, please notify the sender immediately by return email and promptly delete this message and its attachments from your computer system. The sender of this email does not intend to waive any privileges that may apply to the contents of this email or any attachments to it.

2 attachments

11.20.2017 Engel subpoena.pdf

273K



11.20.2017 Vandervliet subpoena.pdf

275K